APPENDIX

CAUSES FOR DISSATISFACTION WITH THE ADMINISTRATION OF JUSTICE IN METROPOLITAN DISTRICTS[1]

INTRODUCTORY

I. The causes for dissatisfaction with the administrat on of justice are more numerous and more emphatically apparent in a metropolitan district than anywhere else.

II. The causes group themselves about the following six subjects:

A. Selection, retirement and discipline of judges.

B. Organization of the judges after they are selected.

C. Selection of jurors as judges of the facts, the guidance of the jury and discrimination in its use.

D. Rules of practice and procedure.

E. Efficiency in the offices of clerks of courts.

F. Selection, retirement, discipline and organization of the bar.

---

[1] This statement was prepared by the American Judicature Society and sent out accompanied by the following letter:

AMERICAN JUDICATURE SOCIETY

TO PROMOTE THE EFFICIENT ADMINISTRATION OF JUSTICE

DIRECTORS

HARRY OLSON, Chairman, Chicago
WOODRIDGE N. FERRIS, Lansing, Michigan
JAMES PARKER HALL, Chicago
FREDERIC BRUCE JOHNSTONE, Chicago
FREDERIC W. LEHMANN St. Louis
NATHAN WILLIAM MACCHESNEY, Chicago

SUITE 340, 29 SOUTH LA SALLE STREET

CHICAGO

DIRECTORS

ALBERT M. KALES, Chicago
ROSCOE POUND, Cambridge, Mass.
JOHN H. WIGMORE, Chicago
JOHN B. WINSLOW, Madison, Wis.
HERBERT HARLEY, Secretary, Chicago

DIRECTOR OF DRAFTING

WILLIAM E. HIGGINS, Chicago

January 6, 1914.

DEAR SIR:

We herewith send you an analytical outline of causes for dissatisfaction with the administration of justice in a metropolitan district, excluding, however, the special causes for dissatisfaction with particular rules of practice and procedure.

This outline was prepared at the instance of the Directors of this Society. It does not necessarily represent the views of the Directors. It simply brings

I. SELECTION, RETIREMENT AND DISCIPLINE OF JUDGES

I. It has been suggested that in the metropolitan district where the elective system prevails the following is a fair *description of the actual mode of selecting and retiring judges and the weaknesses of that system.*

A. Judges are usually not really elected, but are designated by the leaders of the party political machine dominant in the district. These leaders appoint the nomination. The electorate only decides which of two or three sets of nominees it prefers. The compulsory primary has but little altered the situation.

B. These leaders have too little responsibility for the due administration of justice. They have the strongest motives for rewarding purely political service to an organization. The occasional instances when the political leaders exercise power to good purpose do not alter the fact that the system is lacking in adequate efficient responsibility.

C. The judges are subject not merely to a recall, but to a progressive series of recalls—*first,* by the leaders of the party organization refusing nomination; *second,* by a wing of the party knifing the candidate at the polls; *third,* by an upheaval in a national election; and *fourth,* and most rarely, by actual public dissatisfaction with the judge himself. These recalls for the most part retire the judge from office regardless of the character of his service. The

---

together in concise form many, and we hope, most of the suggestions which have been put forward in the last few years by different persons regarding the causes for dissatisfaction with the administration of justice in the United States (omitting, however, particular proposals regarding practice and procedure).

We desire to promote an expression of views on your part regarding the items of this analysis and to receive any independent and additional suggestions which you can give us. If your experience has not been in practice in a metropolitan district, your views as to how far the suggested causes for dissatisfaction apply outside of such districts will be much appreciated.

In replying please refer to the page and subhead of the enclosed analysis and address your remarks as specifically as possible to each item. At the end add further suggestions not brought out by the comments already given.

It is our plan to classify and arrange all the answers received under each item of the enclosed analysis and to add the many additional suggestions which will be received and in this way secure a complete compilation of all suggested causes for dissatisfaction with the administration of justice.

Please do not attempt at the present time to go into your views concerning the details of practice and procedure, for we shall send out at a later time an analysis regarding the causes for dissatisfaction with the rules of practice and procedure and invite your views especially upon that subject by itself.

Very truly yours,

AMERICAN JUDICATURE SOCIETY.

HERBERT HARLEY,

Secretary.

recall at any time by petition will operate to place the judges even more in the power of the political party machine organization than they are now.

D. There is at present no means of disciplining judges at all.[2] There is no chief justice or presiding justices of different divisions of the court to whom the rank and file of judges are responsible for the performance of their duties.

E. There are no service test requirements which permit judges to be selected from among those practitioners only who have obtained some success in actual practice before courts.

F. The mode of selecting and retiring judges is so unsatisfactory and the character of the duties of judges is such as to stifle competition for places on the bench by men who have succeeded in practice.

II. It has been suggested that the selection of judges in the sense of the picking out by the electorate of those among the lawyers who it desires above all others is impossible for a metropolitan district having over one hundred thousand population; that such an apparent method of selection results in appointment by the political party leaders; that therefore if by a non-partisan ballot the political party machine influence could be eliminated or so greatly reduced as not to be controlling, nothing but chaos would result: that as a matter of fact the great influence of the political party machine would continue to be the predominant principal force in the election of judges even with the non-partisan ballot.

III. It has been suggested that the bar association should be given power to place upon the official ballot a bar association ticket which could have upon it candidates who had been nominated by any of the other political parties. The question, however, has arisen whether this would result in a greater power in an unbiased bar association to select good judges, or in the lining up of lawyers in political camps controlled by the leaders of the political party machines.

IV. It has been suggested that nothing of great value can be accomplished until the fact is faced that judges in a metropolitan district are practically certain to be appointed and that the only proper appointing power is one which is legal, conspicuous, subject directly to the electorate and interested in and responsible for the due administration of justice; that this principle may be worked out in various ways:

A. Suggested that judges may be appointed by the state executive; that this is better than the present mode, but objectionable because of the governor's interest in promoting a legislative program, the building up of a political machine, and his remote responsibility for the administration of justice; also that he is frequently a stranger to the metropolitan district.

B. Suggested that appointment be by the highest appellate tribunal of the state, the members of which are subject to the electorate; that this is better than the present method and better than appointment by the governor, because such a court is more responsible than the executive for the due admin-

---

[2] Except in the municipal court of Chicago and a few others similarly organized.

istration of justice and the members of it have a stronger motive for appointing fit men, as well as an excellent opportunity for determining the character and ability of lawyers. On the other hand, most of them may be strangers to the metropolitan district. Also there is danger that the most important tribunal of the state may become involved in politics. Furthermore, responsibility for selection is not concentrated.

C. It has been suggested that the appointment be by a chief justice who is a resident of the metropolitan district and who is subject to the electorate at fairly frequent intervals and in whom should be vested large powers to oversee and direct the work of the courts. It has been suggested that such a chief justice would be conspicuous and in a high degree responsible for the due administration of justice and therefore most interested in the selection of fit men for judges.

1. If such a plan be adopted the following questions arise concerning the selection of the chief justice:

(a) Shall he be elected at a general November election, or a general city election in the spring, or at a special judicial election in June, when no other offices are filled?

(b) Shall there be a separate judicial ballot?

(c) Shall the ballot be partisan or non-partisan?

(d) If partisan—

(1) Shall nominations be by primary?

(2) May candidates run on as many party tickets as choose to include them?

(3) Shall there be a special bar association ticket which may include upon it candidates running on other tickets?

(e) If non-partisan—

(1) Shall nominations be by petition? or

(2) Shall anyone eligible be free to run upon making a deposit in money which will be returned to him if he receives at least half as many votes as any person elected to office?

(f) It has been suggested that the eligibility test for the chief justice should be—

(1) That he has been a lawyer in active practice in the handling of litigation in courts of the state for fifteen years; that he should have been also a resident of the metropolitan district and a practitioner at the bar of that district for not less than ten years.

(2) If any organization of the bar is effected which gives special recognition to practitioners who specialize in the handling of litigation in the courts, the chief justice should be selected from this class only.

(3) That judges already sitting be eligible to run for chief justice only upon resigning at least thirty days prior to the election.

2. Under the plan of selection by the chief justice of the other judges of the court several questions arise:

(a) Shall some of the judges be appointed by the chief justice with the consent of the governor or any other body while other judges are appointed by the chief justice alone?

(b) Shall the eligibility test permit any citizen of the United States who has been admitted to the bar for a given number of years and practiced in any state to become a judge?

(c) Should an eligible list be created consisting of twice as many members as there are judges of the court, to be selected by the chief justice of the court and the heads of the different divisions of the court, to the end that the chief justice may be required to select at least every other judge appointed from the eligible list?

3. The question also arises as to the proper mode of selecting masters or assistant judges:

(a) Shall they be appointed by the chief justice alone; or

(b) By the chief justice and the presiding justice of any division of the court to which the master is to be attached, and in case of disagreement, the presiding justice of the appellate division to make a third member of the selecting committee; or

(c) Shall appointment be by the chief justice and the presiding justice of the division to which the master is attached in rotation; or

(d) Shall the appointment be by the presiding justice of the division to which the master is attached?

(e) Shall there be a civil service examination providing an eligible list and testing candidates' knowledge with respect to the duties of the office and their experience?

(f) Shall any citizen of the United States admitted to the bar in any state be eligible?

V. It has been suggested that the retirement of judges is an entirely different problem from that of their selection; that the problem of retirement also differs, according as the judge is a chief justice with power to appoint judges, or is merely one of a number of judges who have been appointed or otherwise selected.

A. Retirement of the chief justice.

1. What shall be the limit of his term?

2. Shall he be subject to impeachment; or

3. Recall by joint resolution of the legislature; or

4. Recall by popular vote which at the same time operates to elect another?

5. In case of retirement by failure to be reëlected shall the chief justice continue to remain one of the judges of the court, subject to assignment to duty by his successor?

B. Retirement of judges other than the chief justice.

1. Shall they be retired by impeachment; or

2. Recalled by joint resolution of the legislature; or

3. Recalled at any time by popular vote which merely vacates the office, leaving it to the chief justice to fill the place by appointment; or

4. Shall the name of the judge be submitted to the electorate at specified periods, such as three, six and nine years; the question being whether the judge's place shall be vacated, leaving it to be filled by the appointment of the chief justice; or

5. Shall the judge be removable by a vote of the judicial council consisting of the chief justice and the presiding justices of the different divisions of the court after a hearing and after cause shown, the cause to be as general as under civil service acts, *namely*, inefficiency, incompetency, neglect of duty, lack of judicial temperament and conduct unbecoming a judge?

C. Retirement of masters.

1. They may hold at the will and pleasure of the appointing power; or

2. The will and pleasure of the judicial council; or be

3. Dischargeable only for cause which must be stated in writing but need not be proved, said discharge to be by the head of the division to which the master is regularly attached, with the consent of the chief justice; or

4. Discharge only for cause and upon a hearing before the judicial council.

VI. Suggested that the discipline of judges is a different matter from their retirement.

A. That an elective chief justice with power to appoint judges to the court should not be subject to any disciplinary authority on the part of the court.

B. As to the judges other than the chief justice who are appointed to places by the chief justice, it has been suggested:

1. That the council of judges composed of the chief justice and the presiding justices of the several divisions of the court should have power to reprove any judge privately or publicly, to transfer any judge to some other division of the court upon a hearing and for cause shown, such as inefficiency, incompetency, neglect of duty, lack of judicial temperament and conduct unbecoming a judge.

2. That judges, especially in the trial courts, would be held in check and to a proper line of judicial conduct if there were present in the court a specialized and expert bar and by the constant reporting of selected rulings by members of the bar.

C. No special provision for disciplining masters is needed because of the manner in which they may be removed.

VII. It has been suggested that competition for places on the bench by successful practitioners would not be promoted by raising salaries so much as by

A. An improved mode of selection and retirement of judges which tends to give security of tenure to those who do satisfactory work;

B. The improvement in the personnel of the bench and its better organization for the purposes of efficiency, as hereinafter suggested, so as to furnish proper fields of specialization for judges.

C. The creation of important administrative positions, such as the presiding justices of the divisions, who should be *ex officio* judges of the appellate division. This would also attract men of special ability at the bar who might be disinclined to take an ordinary judicial position.

D. These features need only be added to the present salary arrangement in many places to make the positions on the bench sufficiently attractive to draw able and successful members of the bar.

II. THE ORGANIZATION OF JUDGES AFTER THEY ARE SELECTED

I. It has been suggested that the problem presented by the court of general jurisdiction in a metropolitan district where many judges are working at the same time over extensive dockets of cases of all sorts, is this: How can each judge in the time spent upon the bench be brought most effectively into contact with litigation? How can his energies be applied so that he wastes the least time and does the most accurate thinking, which leads to a determination of the cause? This is an ordinary problem for an efficiency expert.

II. It has been suggested that an efficiency expert would first classify and arrange the work.

A. That he would find that all of it fell into at least four classes:

1. Non-contested matters—defaults, motions of course, amendments, etc.
2. Contested motions, demurrers, etc.
3. The trial on the merits.
4. Appeals.

III. It has been suggested that the efficiency expert would then stop the spending of time by the judge on the more trivial work which others could do as well; that he would utilize the services of less highly paid masters or assistant judges to handle motions of course, ordinary defaults and uncontested matters.

IV. It has been suggested that the efficiency expert would then take care that individual judges did not have to cover too wide a field in the handling of causes.

A. That he would find that no man could become expert when he must cover all kinds of practice and substantive law, such as criminal pleading, practice, trials and substantive law; common law pleading, practice, trials and substantive law; chancery pleading, practice, hearings and substantive law; appellate practice and substantive law and practice in all sorts of cases appealed.

B. That the efficiency expert would find that there are several extensive fields of substantive law and of practice in which judges could specialize profitably to themselves, to the public and without unduly restricting the scope of their work, such as

1. Civil and criminal jury trials.
2. Commercial cases tried with and without a jury.
3. Cases tried without a jury, covering the field now largely covered by what is known as chancery practice.
4. Probate, divorce, juvenile court, and family relations in general.

C. That the obvious step is for each judge to be assigned to final hearings in one of these classes of cases—a sufficient number of judges being assigned to each class to dispose of it.

V. It has been suggested that it is obviously unwise to let six or fifteen or thirty judges go to work as they please on a long unspecialized docket of several thousand cases; that to obtain the best results there must be divisional heads who will have large administrative powers and responsibility for

the docket of each division. Hence, each division should have a presiding justice.

VI. It has been suggested that all these arrangements should be merely tentative; that actual experience may show that it will be advisable to transfer some classes of cases from the docket of one division to that of another and some judge from one division to another, and to make new rules for the conduct of judicial business and the function of masters. Hence there must be some managing authority at the head of the whole organization. The chief justice of the entire court is therefore necessary. He should be the head of an executive committee composed of the heads of the several divisions, with full powers of management. The same powers should reside in the court as a whole, if it chooses to exercise them.

VII. That an important cause for dissatisfaction is the attitude of appellate tribunals toward the trial courts, the former frequently administering corrections to the trial judge through reversals. It attempts to discipline and educate by the same means. The result is the trial judge and the appellate tribunal become estranged and in their bickerings the litigant and the public suffer. The remedy for this is obtained by the organization above suggested, where the appellate tribunal and the trial courts are subject to the same central authority, namely, the chief justice and council of judges. By this means trial judges may be corrected and disciplined in a suitable way and by proper authority if they be at fault, without the litigant suffering. The appellate division on the other hand, may be compelled by the same authority to attend solely to the administration of justice and to refrain from exercising the function of educating and disciplining trial judges.

III. SELECTION OF THE JURY AS JUDGES OF THE FACTS, AND ITS GUIDANCE. DISCRIMINATION IN THE USE OF THE JURY

I. Jurors, when used, are the judges of the facts in controversy. The public service of administering justice consists in part of their mental operations in determining facts. Property and personal rights are subject to the determination of jurors. The subject of the method of their selection, the choice of causes in which their services are used and the guidance of the jury by the court is of great importance. Defects in any of the three respects mentioned may give rise to serious dissatisfaction with the administration of justice.

II. Methods of selecting jurors. This has several stages.

A. The drawing of panels by jury commissioners.

B. The preliminary examination by the judge and excusing men or finding them disqualified. Where this is performed by the judge for every panel, it is a waste of time and energy and he should be relieved of it and the duties placed upon some less important official acting under the direction of the judge or the presiding justice of division.

C. The examination of jurors when called into the box and sworn to answer questions touching their qualifications. Here is presented the problem of shortening up the examination, preventing abuses in the extent of exami-

nation, which may result in great waste of judicial energy. *Quaere:* Whether the extensive examinations permitted do not in part find their justification in the fact that in many states under the present system the jurors obtain no guidance from the court in the performance of their function as judges of the facts.

III. It has been suggested that to meet the case of the absence of a member of the panel in long cases there should be additional jurors, or the taking of a verdict of less than the total number.

IV. It has been suggested that the verdict of less than the entire number of jurors hearing the case be sufficient.

V. Discriminating in the use of jurors:

A. It has been suggested that in some classes of cases jurors are of no value at all, *viz.*, in suits depending upon the construction of documents or the legal rights arising from documents. Their use in this class of cases is now eliminated in chancery causes.

B. It has been suggested that juries are of value where the result depends upon the evidence of witnesses regarding human actions and conduct. In these cases juries are a protection against a one-man view of the evidence. A chance is provided for debate among several minds looking at the evidence and observing the witnesses. A chance is given for an appeal from the experienced judge to the judgment of twelve less specially trained minds.

C. At present the cases where juries are not used and where they are used is to some extent illogical, depending upon historical considerations of whether the cause was originally in chancery or at law. It has been suggested that the matter should be reduced by rules of court or by legislation to a more rational line of distinction between the cases where juries are of special service and where they are of no service. In cases lying between the two extremes juries might be permitted upon application and upon terms.

D. It has been suggested that less than twelve jurors be used, especially in cases involving small amounts.

VI. Expert guidance of the jury by the courts: It has been suggested that as the jury with its numbers is a safeguard against the judge, so the judge with his experience should be a safeguard against the jury; that the two should be responsible together for securing a correct view of the facts. The judge, therefore, should have freedom to give to the jury not only his views of the law, but also in his discretion his analysis of the evidence.

IV. THE RULES OF PRACTICE AND PROCEDURE

I. It is suggested that there can be no solution of the problem of efficient rules of practice and procedure so long as the rules which are promulgated are made by the legislature and put out in the rigid and unchangeable form of statutes, which can only be altered or amended or repealed by further act of the legislature; that the subject-matter of rules of procedure and practice has to do with the details incident to the rendering of a public service. The matters dealt with are too minute and technical to secure adequate attention from the legislature. Legislative enactments on such details, however satis-

factory to start with, are certain in the course of time and with changing conditions, to fail.

II. It is suggested therefore that the first and most important step in the improvement of practice and procedure is for the legislature to place the rule-making power in the hands of the courts, with authority to make readjustments from time to time.

V. THE METHOD OF SELECTING, RETIRING AND DISCIPLINING OFFICERS OF THE COURTS, THE CLERKS AND THEIR ORGANIZATION AND DUTIES

I. Here the chief causes of inefficiency are to be found in the multiplication of clerks for different courts instead of a central clerk's office; the complete isolation and independence of the separate clerks by reason of the fact that they are elected and subject only to statutory duties and beyond the power of control by the judges.

II. It is suggested also that the fact that they are elected simply hands the filling of these offices over to the political party leaders who for the time being are successful; that this is in fact an appointment and not an election; that an election in the sense of the electorate choosing is out of the question in a metropolitan district because of the inconspicuousness of the office and that, therefore, some method of appointment is inevitable.

III. It is suggested that a much better method of appointment would exist if the chief justice or a judicial council of the court were authorized to appoint one clerk for one central clerk's office, to hold at the pleasure of the appointing power.

VI. METHODS OF SELECTING, RETIRING AND DISCIPLINING MEMBERS OF THE BAR AND THEIR ORGANIZATION

I. As to the *selection, retirement* and *discipline* of members of the bar.

A. As to the methods of selecting lawyers much has been done to raise standards, moral and educational, for admission to the bar. It has been suggested, however, that further steps may be taken, *viz.:*

1. That two years of general collegiate education be required.

2. That a law school education be required, the period to be the usual one of three years.

3. That admission upon examination at the end of three years' law school study permit practice, excluding, however, any right of being heard in the courts in contested matters; that to acquire the right of being heard in such contested matters in each division of a metropolitan court, a period of apprenticeship in practice be required and a further and special examination, oral and written, which would relate to the practice and rules of substantive law handled in the particular division to which admission is desired.

4. It is suggested also that the whole matter of enforcing compliance with rules for admission to the bar be placed in the control of the governing board of a legally incorporated society of all the lawyers (as indicated hereafter under II) which governing board should act under the supervision of the highest appellate tribunal of the state.

B. It has been suggested that our present method of retiring lawyers by disbarment is so cumbersome as to be quite inadequate in a metropolitan district having from five hundred to five thousand lawyers.

1. It has been pointed out that disbarment proceedings are brought in the highest appellate court of the state, where the matter is referred to a referee for the taking of testimony in support of the charges, the referee reporting his conclusions upon the issues. Thereafter there is a trial *de novo* before the full bench of the supreme court on the entire evidence as reduced to writing. Such disbarment proceedings are in fact a great burden upon the highest appellate tribunal and take up the valuable time of the most important judicial body of the state over what can be as well done by the governing board of a properly organized bar.

2. As a practical matter the grounds of disbarment are the commission of crimes or very serious offenses involving the breach of fiduciary obligations and in rare cases, gross fraud and deception of the court. Some courts have even doubted their power to impose lesser penalties, such as suspension from practice for a limited length of time.

3. It has been suggested that to remedy the above conditions the grounds for disbarment should be codified as completely as possible by the supreme court, or under its direction, and that the enforcement of the code be conferred upon the governing board of a legally incorporated society of all the lawyers in the metropolitan district, subject only to a review by the courts upon terms fixed by rules promulgated by the highest appellate tribunal.

C. It has been pointed out that for the lesser and more prevalent sorts of unprofessional conduct no authoritative code of conduct for lawyers exists except that contained in the grounds for disbarment. The highest tribunal of the state might issue such a code and provide for its enforcement, but it has not done so. Hence no means now exists for requiring a high standard of conduct from lawyers.

1. It has been suggested, therefore, that the supreme court prepare, or have prepared under its direction, an authoritative code of conduct for lawyers.

2. That the enforcement of such a code should be placed in the governing board of an incorporated society of lawyers with possibly a review within limits by the courts, as provided by the rules of the supreme court.

3. That for the infraction of the rules of the code of conduct the governing board of the legally incorporated society of lawyers be permitted to punish by the giving of private warnings, public warnings, public resolutions of condemnation and suspension from practice for a limited period.

II. As to the *organization of the bar*.

A. It has been pointed out that the present organization of lawyers is purely social and voluntary, including in many instances only a small part of the total number of lawyers. It has no such organization or powers as enable it to take charge of admissions to the bar or the matter of disbarment or the discipline of members of the bar and enforcement of an authoritative code of legal ethics.

B. It has been suggested that what is needed is a legally incorporated

society which shall include all lawyers by the simple process of fixing the fees to be paid and the requiring of every lawyer, as a condition to continuance in practice, to keep up his membership in the society; that the governing board of such society should be composed of representatives elected for a considerable term and that the governing board should have power conferred upon it to enforce the rules of the highest court of the state as to admissions to the bar; also to enforce any authoritative code of legal ethics and disbar members. The governing board might be given power to promulgate a code of legal ethics and to enforce it by suspension from practice for a limited term.

C. It has been suggested that the present bar associations are properly organized and well adapted for the functions which they now perform, *namely:*

1. Discussion of public questions such as selection of judges, the changes in procedure and substantive law.

2. Social activities.

III. As to the *specialization* of lawyers with respect to their professional activity.

A. It has been suggested that the same reasons which demand specialization among the judges in the interest of efficiency, require it even more among lawyers. It has been urged that to permit lawyers in a metropolitan district to be heard in any court at will at the same time that they are carrying on all the possible lines of activity which the lawyer touches in the business of the commercial world or in the personal affairs of clients, is to introduce the same sort of disorder and inefficiency as would occur in any large department store if all the employees were allowed to serve the public in any way they saw fit.

B. It has been suggested that the fundamental line of cleavage in the activities of lawyers is between the counselor and the advocate.

1. The position of the counselor has been thus described: The counselor is the lawyer who has clients. Their affairs, business and personal, so far as they touch the law, and in many respects where they do not touch the law, are his principal care. His success is founded in his ability to keep his clients out of trouble; to adjust their differences; to see that the instruments they execute have no pitfalls for them and that their sales and purchases, their creation of trusteeships and organization of corporations, are accomplished within the law. It is the counselor's duty to play safe for his client at all times and to keep him out of difficulty. In a metropolitan district where great business interests center and the wealth of individuals and corporations is very great, the counselor's entire time and energy are frequently given to his special branch of the profession.

The counselor may be an individual lawyer with a small office and a very quiet line of counseling. Frequently several organize in a firm and specialize their counseling somewhat in different directions. Some firms are so large and have such an enormous business that a long list of partners is necessary, many of whose names do not appear in the name of the firm. Many clerks and assistants are employed and different branches of legal business are handled in different departments of the office. Some counselors devote themselves as individuals to special lines of counseling. They are counselors to trust de-

partments of a bank. They are counselors for corporation management and the issuance of corporations' securities or for particular kinds of corporations. Often their offices are with the executive offices of the corporation, or adjacent to the business office of the individual. Sometimes they are independent and serve several corporations or individuals requiring the same sort of counsel.

The counselor with any extensive practice in a metropolitan district has no time for work in the courts in important contested matters. The simpler and uncontested work in the courts is performed by clerks, assistants and junior partners under the counselor's direction. The counselor discovers that he loses money whenever he goes into court in a contested case. His clients cannot reach him and he cannot serve them satisfactorily. When the counselor's client becomes involved in important litigation it is economically to the advantage of the counselor to prepare the case fully in view of his complete knowledge of all the affairs of the client, and then to secure the services of a trained advocate who can fully absorb the case and does so under the guidance of the counselor, and then conducts the case through the courts, with or without the coöperation of the counselor, as the counselor prefers.

2. The advocate's line of activity has been thus described: The advocate answers the inevitable demand of the counselor for a well-trained and effective trial lawyer. The advocate makes a business of practicing in the courts in contested cases, especially those of more than usual importance to the parties engaged. His success depends upon the development of individual talent in the handling of litigation in the courts on the civil and criminal side, or both. He must satisfy, not the layman who is a client, but the trained counselor who is able to distinguish ability from bluff. The advocate, therefore, has no time for or interest in the miscellaneous affairs of clients. His energy is concentrated upon the handling of particular cases in the courts. Whatever counseling he may do is merely such as he may contribute at the request of counselors in particular matters where his advice, in view of his experience in the courts, may have particular value. The advocate's days are spent in the preparation of cases for hearing or in actual trials. His earnings accrue as the result of conducting litigation which the counselor decides is necessary or inevitable. Specialization among advocates is probably inevitable. Some will devote themselves to jury trials, civil and criminal, and appeals; others to commercial causes tried with and without a jury, and appeals; others to chancery causes and appeals.

3. It has been suggested that in view of the special development of the counselor in the United States his position must be the more prominent and important branch of the profession. Socially, financially and from the point of view of influence in the community, his is the more desirable position. The advocate is clearly dependent upon the counselor for business and consequently must seek the favor of the counselor. The advocate always stands in the community as an individual with individual talents. He gets nowhere professionally as the member of an organization. He renders always individual and personal service. The financial rewards on the average are comparatively small. He tends toward an interest in the academic side of the law rather than toward a development of commercial and financial astuteness.

The advocate, however, chooses his profession because he prefers the work which he selects to that which the counselor does and his own special reward is the attainment of success as an advocate and after a mature experience, a place upon the bench.

C. It has been suggested that a *sine qua non* to the development of the distinction between the counselor and the advocate is that the advocate shall not invade the sphere of activity of the counselor by dealing with clients and that the counselor in return shall not undertake the handling of contested matters in the courts except as he does so in coöperation with the advocate. The latter rule is a fair exchange for the former. The keeping of the advocate away from handling clients is absolutely necessary as a guarantee that a popular advocate who has a public following shall not steal the clients of the counselor.

D. The advantages of such specialization among lawyers have been put forward as follows:

1. These advantages are very great from the point of view of the individual. He has a chance for more agreeable work by reason of the specialization, and also in case of success, an opportunity for greater profits.

2. From the point of view of the public the advantages are:

(a) The specialization furnishes a service test for candidates for judgeships, since judges would for the most part be selected from those who specialize in the handling of contentious business in the courts.

(b) The motives for expediting the work of the courts by the lawyers are vastly increased.

(1) The lawyer handling contentious business in the courts wishes to go ahead with trials as rapidly as possible, since his income depends upon doing this work.

(2) The client wishes work in the courts done expeditiously because he is paying an expert for special services.

(c) Greater assistance is rendered the court. Court and advocate can drive at the main point of controversy with the greatest speed. The advocate can eliminate much that he knows by experience to be not worth presenting without fear of injuring the client's cause.

(d) False and fraudulent claims and ill-founded suits are more easily than now to be discouraged because the advocate must protect his standing with the court.

(e) Greater knowledge of the rules of the courts by the bar is developed and the criticism and scrutiny of the judge's work are much closer and hold the judge much more in check than the present system.

(f) There is better service to the client.

(1) Legal business better attended to.

(2) Litigation more quickly reached and disposed of.

(3) Better representation on the firing line in litigation.

(4) Better preparation for trial.

(g) Over-contentiousness would be reduced because the advocate must protect his standing with the court.

(h) The objection that a separation of the advocate from the counselor is a bad thing is founded largely in the sentiment and pride of present members of the profession, all of whom call themselves members of the bar, and have freedom to range the courts when and where they please. It is said also that a man who is in touch with the client's entire affairs prepares a case better for trial. But even when an advocate is employed the client's regular counselor has the chief burden of the case's preparation and there is no reason why the advocate should not have the greatest freedom of intercourse with the client and the witnesses in preparing cases for trial. No canons of professional etiquette should ever be allowed to keep the advocate from direct contact with the client and his witnesses, or separate the counselor from easy conference with the advocate while in court. As for the counselor's pride in having free audience in the court, that should not stand in the way of efficiency in the work of the courts and the service rendered clients.

E. It is suggested that such specialization among lawyers may be promoted in the following ways:

1. *The competitive method:* Under this the advocate makes it clear that the counselor cannot compete with him in the handling of litigation in the courts. This results in the following developments:

(a) Large firms of counselors, with a large and varied number of clients, employ one or more advocates to give all their time to the litigated work of the firm.

It has been suggested, however, that this is a transition stage only, because

(1) It does not provide any way for the smaller firms of counselors and single counselors to secure expert advocacy without running the risk of losing their clients to the big firms of counselors.

(2) It has the disadvantage of cutting off the large firm of counselors from securing the best advocate for the particular case. It requires the employment of the same advocates for all sorts of cases.

(3) This arrangement is unsatisfactory to the advocate in the long run, for he finds it continually more difficult to become expert when he must deal with the difficult cases arising in a metropolitan district handling many thousands of important cases in all branches of the substantive law and practice.

(b) The moment the system whereby an advocate gives all his time to a firm of counselors begins to break down the individual advocate appears. He first answers the demand of smaller firms and individual counselors who wish to secure expert advocacy in particular cases, and by restricting the field of his advocacy he is able to compete successfully in his line with the advocates employed by the big firms who must cover a very much wider field.

2. *The slightly coercive method:* This involves the imposition of special requirements for admission to practice in the courts in the handling of contested matters and trials, *viz.:*

(a) First, a general admission to practice as counselor.

(b) Practicing as a counselor for a limited term.

(c) Then a special examination for admission to practice as an advocate in each trial division of the metropolitan court.

(d) This might result in many persons staying out of practice in contentious matters, especially in courts where they never expected to practice. It would tend to cause one who had taken the trouble to secure admission to practice in particular divisions, to practice there and to receive a share of contested causes heard in those divisions.

(e) This plan leaves every lawyer free to practice both as a counselor and as an advocate, but imposes special requirements on practicing as an advocate which would tend to cause anyone so practicing and succeeding to devote himself largely to advocacy.

(f) It should be a rigid rule, even under this system, that any lawyer practicing as an advocate should be barred from ever or for a considerable time dealing as a counselor with any client whom he represented as an advocate for any counselor.

3. *Compulsory division:*

(a) The counselor might be ruled out of all audiences in the courts in contested causes except as he appeared associated with an advocate and the advocate might be ruled entirely out of the sphere of the counselor, and the requirements for admission to each branch of the profession might be fixed independently, with the right of any member of either branch of the profession to transfer to the other branch.